

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Communications Assistance )  
for Law Enforcement Act )

CC Docket No. 97-213

**RESPONSE TO INITIAL REGULATORY FLEXIBILITY ANALYSIS**

BellSouth Corporation,<sup>1</sup> on behalf of its affiliated companies,<sup>2</sup> by counsel, files its response to the Commission's Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and rules suggested in the Notice of Proposed Rulemaking in the above-referenced docket.<sup>3</sup>

**BACKGROUND**

The implementation of CALEA marks a change in the assistance role of carriers. Instead of pointing out where company facilities are located and promising company facilities for law enforcement use, carriers will also extract call content and call identifying information from their switches and deliver same to law enforcement. Such a practice will hopefully permit a carrier to

<sup>1</sup> BellSouth Corporation (BSC) is a publicly traded Georgia corporation that holds the stock of companies which offer local telephone service, provide advertising and publishing services, market and maintain stand-alone and fully integrated communications systems, and provide mobile communications and other network services world-wide.

<sup>2</sup> BellSouth Telecommunications, Inc. (BST), a Bell operating company that provides wireline telephone exchange service and exchange access service in parts of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and BellSouth Cellular Corp., a Georgia corporation that owns the stock of BellSouth Mobility Inc and American Cellular Communications, companies which construct and operate cellular systems throughout the United States, participated with BSC in the preparation of these comments. These entities, together with BST and BSC, are collectively referred to herein as BellSouth.

<sup>3</sup> Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Notice of Proposed Rulemaking* (October 10, 1997) ("NPRM") at ¶ 54.

centralize its assistance efforts and further safeguard the security and integrity of its efforts. In any event, carriers must have the flexibility to design and implement their own individual compliance practices based on their individual operations. CALEA and existing federal wiretap laws already require carriers to protect the secrecy of wiretaps. Additional and detailed compliance requirements by this Commission will only increase carrier burdens.

**I. THE ADDITIONAL COSTS TO BELL SOUTH FOR CONFORMING TO THE COMMISSION'S PROPOSED REGULATIONS CONTAINED IN THE NPRM ARE NOT MINIMAL**

The Commission correctly concludes in its IRFA that telecommunications carriers who have been subjected to demands from law enforcement personnel to provide lawful interceptions of communications and call-identifying information for a period of time preceding CALEA already have in place practices for proper employee conduct and recordkeeping.<sup>4</sup> As BellSouth explained in its comments to the NPRM, BellSouth, through its wireline and wireless affiliates, has a long history of cooperation with law enforcement agencies, including the Federal Bureau of Investigation (FBI), in facilitating the electronic surveillance of criminal suspects pursuant to appropriate judicial authorization.

BellSouth has been assisting local, state, and federal law enforcement agencies with court-ordered electronic surveillances for as long as such agencies have been able to obtain court orders to obtain surveillance and has handled thousands of such surveillances without incident. BST, for example, employs internal Security Department Specialists whose responsibilities as a point-of-contact for law enforcement agencies seeking court-ordered surveillances are outlined in their written job descriptions. BST's security specialists already maintain confidential files on each court-ordered surveillance, and retain these documents for five years after their creation.

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<sup>4</sup> NPRM at ¶ 74.

In its IRFA, the Commission states that by “providing general guidance regarding the conduct of carrier personnel and the content of records in this NPRM, the Commission permits telecommunications carriers to use their existing practices to the maximum extent possible.”<sup>5</sup> Although BellSouth agrees wholeheartedly that carriers should be permitted to use their existing practices to the maximum extent possible, BellSouth strongly opposes the Commission’s elaborate and overbroad affidavit and recordkeeping proposals as redundant, inefficient, and unnecessary. These requirements go far beyond BellSouth’s existing practices, which have been designed to ensure thorough compliance with CALEA and state and federal wiretap laws. Indeed, the Commission has made no finding that any problem exists today with carriers’ current policies and procedures. Similarly, under CALEA there is not a requirement for a carrier to maintain specific detailed records. Under CALEA, the carrier is permitted to use its own records, practices, and procedures in such a way which allow it to comply with Section 103 requirements.

BellSouth is opposed to the proposed ten year document retention period which is twice as long as BST’s current policy, a very conservative five year period. The cost of maintaining and archiving documents does not justify retaining documents related to electronic surveillance which have minimal business or legal utility for a telecommunications carrier. Federal law currently requires law enforcement agencies to retain the recording of contents of an intercepted communication for ten years.<sup>6</sup> It is inappropriate to require a carrier, who merely provides an assistance function for law enforcement, to also retain its records documenting such assistance for ten years. Contrary to the Commission’s conclusion in its IRFA, the requirements set forth in proposed rule 1704 constitute more than “general guidance;” they are in fact specific,

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<sup>5</sup> *Id.*

<sup>6</sup> 18 U.S.C. § 2518(8)(a).

unnecessary, and burdensome positive requirements that will impose additional, and more than minimal, costs on BellSouth and its affiliated companies.

## **II. A CARRIER'S SIZE SHOULD HAVE NO BEARING ON ITS CALEA REPORTING REQUIREMENTS**

BellSouth disagrees with the Commission's analysis in its IRFA that CALEA itself is "specific on the content of employee conduct and recordkeeping regulations for telecommunications carriers" and that the legislation provides for Commission discretion to treat small carriers differently than large carriers for the purpose of formulating CALEA reporting requirements.<sup>7</sup> The Commission cites to no specific authority for either of these propositions in its NPRM or in its IRFA. Section 105 of CALEA merely sets forth general requirements of systems security and integrity for carriers to adhere to in their assistance role for law enforcement. There is simply no basis for determining that the potential for non-compliance is related to the size of a carrier; if anything, logic would dictate that smaller, inexperienced carriers and new entrants pose more of a potential compliance problem than larger, more experienced carriers. It is rational to expect that the costs and compliance burden will in fact be greater, proportionately, for larger carriers because they will receive far more assistance requests from law enforcement than will smaller carriers.

Section 301(b) of CALEA mandates that the rules prescribed by the Commission to implement CALEA shall include rules requiring all common carriers to submit their CALEA-appropriate policies and procedures to the Commission.<sup>8</sup> BellSouth is opposed to the Commission's proposal to differentiate between carriers, based on size, for the purpose of determining who must submit their CALEA security and recordkeeping policies to the

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<sup>7</sup> NPRM at ¶ 75.

<sup>8</sup> 47 U.S.C. § 229(b)(3).

Commission for review. The statute makes no such distinction, nor does it authorize the Commission to make any such distinction. The Commission should treat all carriers alike with respect to CALEA reporting requirements.

### CONCLUSION


The Commission in its IRFA understates the economic impact of its proposed recordkeeping requirements on carriers and erroneously finds a legislative direction to favor smaller carriers over large carriers in crafting compliance reporting rules. The Commission should not adopt proposed rule 64.1704 or proposed rule 64.1705. Instead, the Commission should allow carriers to use their respective existing practices in the absence of a contrary determination by the Commission after a Section 301(c) compliance review, and should adopt the same reporting or certification requirement for all carriers.

Respectfully submitted,

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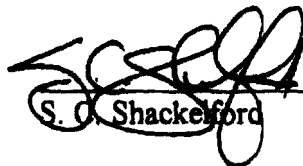
DATE: December 12, 1997

### **CERTIFICATE OF SERVICE**

I do hereby certify that I have this 12th day of December, 1997, served all parties to this action with a copy of the foregoing **RESPONSE TO INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS** by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed hereinbelow.

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